DEPARTMENT OF THE NAVY
UNITED STATES MARINE CORPS

MILITARY

JUSTICE

OVERVIEW

- Mission Statement
- Statistical data
- Criminal investigation
- Convening authorities
- Request for legal services
- Convening orders
- Charge sheet
- General court
- Bailiff
- Chasers/accused
- Confinement/restriction/VWAP
- Summary court-martial

MILITARY JUSTICE SECTION

- **Mission Statement:**

  - **Advise commands and agencies**
  - **Draft charges from request for legal services**
  - **Coordinate all aspects of special and general courts-martial**
  - **Prosecute cases in a timely manner**

POINTS OF CONTACT

- **Military Justice Officer:**
  Major Hale (269-3483)
- **Trial Counsel:**
  Major McNeice (269-3487)
- **Military Justice Chief:**
  Staff Sergeant Parise (269-3485)
- **Military Justice Clerk:**
  Lance Corporal Fabre (269-2890)
- **Military Justice fax: (269-3486)**

REFERENCES

- Manual for Courts-Martial (2002 edition)
- JAG Manual (w/Change 3, Chapter 1)
- Legal Admin Manual (MCO P5800.16A)
- JLC Website (http://www.yuma.usmc.mil/services/legal/)
- SJA to the CMC Website (http://sja.hqmc.usmc.mil/)

MILITARY JUSTICE CY 2002 STATS

- Courts-Martial
  - General 8
  - Special 44
  - Summary 46

  - Total 98

- Article 32's 8

CRIMINAL INVESTIGATION

- Methods to investigating a crime:
  - Criminal Investigation Division (CID) 269-6000
  - Naval Criminal Investigative Service (NCIS) 269-2305
  - Preliminary Inquiry (R.C.M. 303)
  - Civilian Investigations

CONVENING AUTHORITIES

- General court-martial:
  - 3dMAW
    - CG, 3d MAW is MajGen James F. Amos
  - Station
    - COMCABWEST is BGen Jon A. Gallinetti
    - OEGCMJ is Col Paul C. Christian
- Special court-martial
  - 3dMaw
    - Group & Squadron Commanding Officers
  - Station
    - Station CO & Headquarters Squadron CO
- Summary court-martial
    - All of the above

REQUEST FOR LEGAL SERVICES (RLS)

- RLS (plus two copies)
  - Request for court-martial
  - Brief/concise statement of facts
  - Route through chain of command
  - Documentary evidence (plus 2 copies)
  - Original SRB (plus 3 copies of the right hand side)
  - BIR/BTR
  - Appropriate entries
  - Pretrial Restraint block must be accurate
  - Copies of restriction/confinement orders

CONVENING ORDERS

- A panel of members assembled in which a convening authority may refer violations of the UCMJ to court-martial (equivalent to a jury panel)
- A convening order (panel) needs to exist prior to a convening authority referring charges to a court-martial
- Panel needs to be selected by the convening authority using Article 25, UCMJ criteria. Court-martial member questionnaires should be provided to convening authority for consideration in selecting a court-martial panel.

CONVENING ORDERS CONT.

- JLC will draft all convening orders and modifications thereto (5 member standing panel)
- Once panel selected, court-martial questionnaires should be forwarded to the military justice section at the Joint Law Center (soon available on the JLC web page)
- Signed by the convening authority only
- Designate location of trial at MCAS Yuma or any such authorized place as directed

CHARGE SHEET

- **Preferral of charges (R.C.M. 307)**
  - Blocks 11a – 11d on charge sheet
  - Formally charge a Marine or Sailor
  - Evidence from RLS
  - Sworn oath
  - Start Government clock (120 days)
  - Conducted by JLC personnel during charge drafting process
- **Receipt of charges:**
  - Block 13 on charge sheet
  - Summary court-martial convening authority
  - Signed by an officer
  - Time/date/signature block filled out

CHARGE SHEET CONT.

- Inform accused of charges:
  - Block 12 on charge sheet
  - Accused read allegations and formally charged
  - Legal officer or sergeant major

- Referral of charges to special court:
  - CO sign/dates referral block (block 14)
  - CO TAD/leave – XO signs (Commanding)
  - 48 hours

CHARGE SHEET CONT.

- Charge sheet completed (48 Hrs):
  - If general court-martial, simply return charge sheet to law center
- Service of charges (block 15):
  - Military justice clerk will call to have accused report to him
  - Accused given a copy of referred charges
  - Trial Counsel signs charge sheet

GENERAL COURT-MARTIAL

- Article 32 Investigation (R.C.M. 305)
  - Preliminary hearing
  - Investigating officer (IO) provided by JLC
  - IO appointing letter drafted by JLC
  - Evidence and witnesses

- Investigating officer's report:
  - Recommends appropriate forum for court-martial
  - Article 33 letter (48 hours)
  - Article 34 letter (SJA advice to CG)

COURT-MARTIAL MEMBERS

- **Members (Article 25, UCMJ):**
  - best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament.
  - Officer/enlisted
  - Enlisted one-third
  - Enlisted members from accused same squadron is prohibited
- **Special court:**
  - CO/CA selects members and signs convening order modification
  - Legal officer notifies members: Summer Service “C” uniform/date/time court
  - Assembles questionnaires

COURT-MARTIAL MEMBERS CONT.

- General court:
  - G-1 submits nominees from units
  - Legal officer notifies members: Service “C” uniform/date/time court
  - Assembles questionnaires

BAILIFF

- Unit provides bailiff
- Equal rank of accused or senior
- Member of court
- Brief at law center
- Uniform is Summer Service “C” with all ribbons

CHASERS AND ACCUSED

- Chasers:
  - Unit's responsibility (also need a Government vehicle and a driver)
  - Coordinate with trial counsel or Military Justice Chief
  - Brig classes to qualify Marines/Sailors for chaser duty and receive an authorized chaser card (269-2881)
  - Ensure your unit has female chasers
  - Be on time to court
  - Do not allow accused to drive POV to law center on day of court-martial

CHASERS AND ACCUSED CONT.

- Accused is allowed to be alone with his defense counsel
- Proper haircut/shave
- Summer Service “C” or Navy equivalent uniform with all ribbons
- Chaser uniform is utilities
- Brig needs 24 hour notice to release prisoner

CONFINEMENT/RESTRICTION

- Pretrial confinement/restriction:
  - Red Flag!!!!!!!!!
  - Notify Law Center ASAP
  - Expeditiously process RLS
  - 120 days to trial
  - Magistrate hearing within 7 days
  - Ensure accused has a proper fitting Summer Service “C” uniform or Navy equivalent once confined
- Confinement due to court sentence:
  - Gear inventoried
  - Accused’s personal affairs in order
  - Confinement order

PRETRIAL CONFINEMENT

- R.C.M. 304 – Not for punishment
- To ensure presence
- To prevent foreseeable misconduct
- Must consider lesser forms of restraint (restriction)
- CO's letter to brig
- Command representative at the IRO hearing
- Notify JLC ASAP
- Trial Counsel can assist with IRO hearings

VWAP

- VICTIMS/WITNESS ASSISTANCE PROGRAM Forms (VWAP)
- Program informs victims and witnesses of their pre and post trial rights
- Each accused that is given confinement from a court sentence is required to have a completed DD Form 2704 provided to the brig
- DD Form 2704 list all victims/witnesses in the case and gives them the option to be notified of an inmates status, relocation to another confinement facility or release

MENTAL COMPETENCE

- R.C.M. 706 Board
- Ordered by Convening Authority (CA)(before arraignment) or Military Judge (after arraignment)
- Trial Counsel (TC) will draft order for CA if necessary
- TC will draft request to BMC Yuma and/or NMCSD
- TC will draft request for excludable delay

COMMON ERRORS

- Missing original SRB/OQR
- Missing appropriate number of copies
- Missing evidence (DD Forms 553 and 616/statements/confinement orders)
- Failure to notify military justice when Marine/Sailor place in pretrial confinement/restriction/UA status
- Forgetting that the accused still belongs to the unit, not the JLC

COMMON ERRORS (CONT.)

- Failure to ensure proper fit of Summer Service “C” or Navy equivalent uniform for accused
- Failure to notify Brig for confinee release (Art. 32/SPCM/GCM)
- Failure to pick up original SRB/OQR after trial
- Sending the accused TAD, on leave or CAX without notifying the military justice section

OFFICER MISCONDUCT

- Whether NJP or court-martial, all are handled by the JLC
- Contact the Military Justice Officer for guidance

SUMMARY COURTS

POINTS OF CONTACT

- Major Hale, Military Justice Officer (269-3483)
- Major McNeice, Trial Counsel (269-3487)
- LCpl Fabre, Military Justice Clerk (269-2890)

AUTHORITIES

- MCM (2002 edition), Rules for Courts-Martial 403-407, 1103 and 1301-1305, and Appendix 9
- Art. 20, UCMJ
- JAGMAN, sections 0150(d), 0152(a)(2), 0153(a), 0154(a)(3)
- SCM Guide (soon to be posted on the JLC web page)

OVERVIEW

- What is a SCM?
- Your role in the SCM process
- How is a SCM conducted?
- Maximum possible punishments
- SCMO role after trial

WHAT IS A SCM?

- Least severe/fast Court-Martial
- One officer who is: MJ, TC, DC, Jury
- Not a criminal court
- Accused can refuse
- Military Rules of Evidence apply
- Seek JA advice on questions of law, but not fact

YOUR ROLE IN THE PROCESS:

- Assemble evidence; witnesses; documents etc.
- Ensure SCMO appointed
- Get charges referred
- Arrange place for SCM
- Brief SCMO on his duties
- Send SCMO to JLC for trial guide (ASAP)
- Arrange chasers

YOUR ROLE IN THE PROCESS (CONT.)

- Review report for completeness
- Present report for CA's action
- Copy report for your files
- Forward report to the Joint Law Center Attn: Review Section for a Judge Advocate Review
- Forward additional copy of referred charges and Results of Trial to Military Justice Section

HOW IS A SCM CONDUCTED?

- Gather evidence
- Review charge sheet; convening order; evidence
- Preliminary proceeding with the accused: (Not the trial)
  - inform accused of his rights
  - fill blocks 4-5 of DD 2329
  - give accused copy of charge sheet
  - allow accused to examine evidence against him
  - ask how accused intends to plead at SCM--note if a PTA, a guilty plea is binding
  - ask for accused's witnesses

HOW IS A SCM CONDUCTED? (CONT.)

- set trial date/place
- arrange for witnesses
- review UCMJ article charged
- conduct trial
- seat accused
- accused signs rights form
- read from trial guide
- take notes as you go
- summarize testimony
- receive accused pleas

HOW IS A SCM CONDUCTED? (CONT.)

- establish factual basis for pleas. Note that a guilty plea waives right to remain silent
- hear available witnesses
- render findings
- award sentence
- report findings and sentence to CA
- prepare and submit report of SCM

MAXIMUM PUNISHMENTS

- Confinement: 30 days for E-4 and below only
- Reduction: to E-1 for E-4 and below, all others only one grade
- Forfeiture: of 2/3 base pay for one month
- Restriction: 60 days if no confinement awarded
- Hard labor w/o confinement: 45 days
- No Correctional Custody Unit (CCU)

SCMO ROLE AFTER TRIAL

- Have accused sign acknowledgement of RCM 1105 rights form
- If accused confined, execute DD Form 2704 (victim/witness assistance program)--give to Legal officer to attach to confinement order and send to brig
- Complete ROT w/attachments in this order:
  - DD Form 2329
  - Written summary of proceedings
    - accused informed of rights per DD Form 2329
    - accused did not object to trial by SCM
    - summary of accused's statement

SCMO ROLE AFTER TRIAL (CONT.)

- statement of which charges accused was found guilty
- list/summary of witnesses and their testimony
- charge sheet
- documentary exhibits
- trial guide (filled in)
- acknowledgement of RCM 1105 rights form
- route ROT: accused and Legal officer

SUMMARY

- Use the LegalO and SCMO checklists
- Get paperwork together for SCMO
- Assist in logistic aspect of conducting trial
- Review entire SCM report for completeness
- Submit to CO/CA for Action (must wait 7 days unless 1105 matters are waived)
- Keep copy for unit files
- Forward original to JLC Review

TAKE HOME POINTS

- Chasers need much attention
- JLC needs members detailed ASAP when forum is selected
- Military Justice paperwork must keep moving
- Track your cases (at least weekly)
- Don’t deal directly with a Defense Counsel
- Be aware of court-martial processing times
- A Summary court with an AdSep board waiver may be a good option

Questions ???